

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

DAVID D. ROUNTRY) NO.
)
Plaintiff;) COMPLAINT
v.)
) <u>JURY TRIAL DEMANDED</u>
)
STATE OF WASHINGTON, MARK B.)
HOLTHAUSE and JANE DOE)
HOLTHAUSE and the marital community)
thereof;)
)
Defendants.)
_____)

COMES NOW Plaintiff, David D. Rountry, by and through his attorney, William T. Ferrell of The Evergreen Law Group, P.S., complaining against defendants, State of Washington, Mark B. Holthause and Jane Doe Holthause and the marital community thereof, and alleges as follows:

I. JURISDICTION AND VENUE

1.1 This Court has jurisdiction over the subject matter of this action pursuant to Title 28, United States Code §§ 1331, 1332 and 1343, and venue is properly set in the Western District of Washington State pursuant to 28 U.S.C. § 1391.

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1.2 The claims upon which this action is based occurred in the Western District of Washington State.

1.3 Plaintiff is informed and believes and on this basis alleges that each of the named Defendants reside in this judicial district.

1.4 State of Washington was served with a Claim for Damages pursuant to RCW 4.96. State of Washington has responded to the Claim for Damages, but did not negotiate and more than sixty days has elapsed since its filing.

II. PARTIES

2.1 Plaintiff David D. Rountry is an unmarried individual residing primarily in the State of Washington, County of Thurston within the Western District of Washington State.

2.2 Defendant State of Washington is a government entity which includes the Washington State Patrol.

2.3 Defendants Mark B. Holthause and Jane Doe Holthause constitute a marital community under the laws of the State of Washington, and upon belief reside within the Western District of Washington State. Upon belief, Mark B. Holthause is and was at the time of the incidents that are the subject of this action an employee of or agent for the State of Washington with the Washington State Patrol, and acting within the scope of his duties.

III. FACTS

3.1 On May 29, 2009 defendant David D. Rountry was the subject of a traffic stop at Mounts Road and Interstate 5 in Pierce County, Washington.



1 3.2 Washington State Patrol Trooper Mark B. Holthause was the Trooper conducting the
2 traffic stop of David D. Rountry.

3 3.3 David D. Rountry was cited for failing to yield the right of way, an infraction.

4 3.4 After being issued the citation, David D. Rountry exited his vehicle to speak further
5 with Mark B. Holthause.

6 3.5 Mark B. Holthause, after ordering David D. Rountry to return to his car, told David D.
7 Rountry he was under arrest.

8 3.6 Mark B. Holthause grabbed David D. Rountry, twisting his arm behind him and
9 placed him in wrist restraints.

10 3.7 Mark B. Holthause escorted David D. Rountry toward his patrol vehicle jerking his
11 arms severely several times and eventually placed him in the back seat of his patrol
12 vehicle.

13 3.8 David D. Rountry was taken to the Pierce County Jail where he was cited for failing to
14 obey a police officer, a misdemeanor, resisting arrest, a misdemeanor, and was booked
15 on those charges.

16 3.9 Ultimately, David D. Rountry was charged in Pierce County District Court with
17 Resisting Arrest while the charge of failing to obey a police officer was not filed by
18 the Pierce County Prosecuting Attorney's Office.

19 3.10 The charge of Resisting Arrest was dismissed by the court with prejudice on the
20 motion Pierce County Prosecuting Attorney's Office.

21 3.11 The infraction for failing to yield was dismissed dismissed by the Pierce County
22 District Court.



1 3.12 As a result of the actions of Mark B. Holthause, David D Rountry suffered numerous
2 cuts, bruises and abrasions.

3 3.13 As a result of the actions of Mark B. Holthause, David D. Rountry suffered a rotator
4 cuff injury which required surgery to repair.

5 3.14 As a result of the actions of Mark B. Holthause, David D. Rountry suffered a right
6 wrist contusion with snuffbox tenderness.

7 3.15 As a result of the actions of Mark B. Holthause, David D. Rountry suffered
8 extraordinary, protracted physical pain and suffering.
9

10 IV. STATEMENT OF DAMAGES

11 4.1 As a direct and proximate result of the acts of Defendants, Plaintiff David D. Rountry
12 suffered violations of certain constitutionally protected rights, including violations
13 under the Fourth, Fifth and Fourteenth Amendments of the U.S. Constitution.

14 4.2 As a further direct and proximate result of the acts of Defendants, Plaintiff David D.
15 Rountry suffered physical injury.

16 4.3 As a further direct and proximate result of the acts of Defendants, Plaintiff David D.
17 Rountry suffered physical pain and suffering, anxiety, emotional distress, and
18 humiliation.

19 4.4 As a further direct and proximate result of the acts of Defendants, Plaintiff David D.
20 Rountry incurred costs and fees—including filing fees, attorneys fees, investigatory
21 fees, copying costs, and the like—associated with bringing and maintaining this
22 action.
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4.5 As a further direct and proximate result of the acts of defendants, Plaintiff David D. Rountry incurred costs and fees – including attorneys fees – associated with defending the criminal action.

V. CAUSES OF ACTION

COUNT ONE
VIOLATION OF CIVIL RIGHTS
(As to individual Defendant)

- 5.1 Plaintiff David D. Rountry re-alleges and incorporates herein by reference the allegations set forth in Paragraphs 1.1 through 4.4.
- 5.2 Defendants acted under color of law to deprive Plaintiff David D. Rountry of certain constitutionally protected rights, including, but not limited to (1) the right to be free from unreasonable and excessive force under the Fourth and Fourteenth Amendments, (2) the right to be free from cruel and unusual punishment under the Fifth, Eighth, and Fourteenth Amendments, and (3) the right to due process of law under the Fifth and Fourteenth Amendments.
- 5.3 As a direct and proximate result of Defendants' actions, Plaintiff David D. Rountry sustained damages.

COUNT TWO
VIOLATION OF CIVIL RIGHTS
(As to all Defendants)

- 5.4 Plaintiff re-alleges and incorporates herein by reference the allegations set forth in Paragraphs 1.1 through 4.4.
- 5.5 Defendants acted pursuant to official governmental policy under color of law, statute, ordinance, regulation, custom, or usage of the State of Washington, and thereby



1 subjected, or caused to be subjected, Plaintiff David D. Rountry to the deprivation of
2 his rights, privileges, or immunities secured by the Constitution of the United States.

3 5.6 As a direct and proximate result of Defendants' actions, Plaintiff David D. Rountry
4 sustained damages.

5 COUNT THREE

6 BATTERY

7 5.7 Plaintiff re-alleges and incorporates herein by reference the allegations set forth in
8 Paragraphs 1.1 through 4.4.

9 5.8 Defendant Mark B. Holthause intentionally caused a non-consensual harmful or
10 offensive contact to the person of Plaintiff David D. Rountry.

11 5.9 As a direct and proximate result of Defendants' actions, Plaintiff David D. Rountry
12 sustained damages.

13 COUNT FOUR

14 FALSE ARREST

15 5.10 Plaintiff re-alleges and incorporates herein by reference the allegations set forth in
16 Paragraphs 1.1 through 4.4.

17 5.11 Defendant Mark B. Holthause arrested plaintiff David D. Rountry.

18 5.12 The arrest was made without probable cause.

19 5.13 The unlawful arrest proximately caused plaintiff David D. Rountry's damages.

20 COUNT FIVE

21 FALSE IMPRISONMENT



1 5.14 Plaintiff re-alleges and incorporates herein by reference the allegations set forth in
2 Paragraphs 1.1 through 4.4.

3 5.15 Defendant Mark D. Holthause, acted with an intent to confine Plaintiff David D.
4 Rountry.

5 5.16 Defendant Mark D. Holhause confined Plaintiff David D. Rountry by placing him in
6 handcuffs then into his patrol vehicle then by transporting him to the Pierce County
7 Jail.

8 5.17 At all times alleged herein, Plaintiff David D. Rountry was aware of the confinement
9 and damages.

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11 VI. JURY TRIAL DEMAND

12 6.1 Plaintiffs demand a jury trial in this matter.

13 VII. RESERVATION OF RIGHTS

14 7.1 Plaintiffs reserves the right to amend this complaint as the factual allegations
15 contained herein, and to add any and all other claims that have or may arise from the
16 facts underlying this lawsuit.

17 VIII. PRAYER FOR RELIEF

18 WHEREFORE, Plaintiff David D. Rountry asks the Court for the following relief:

19 8.1 To accept jurisdiction of Plaintiff David D. Rountry's claims and to grant his request
20 for a jury trial of her peers;

21 8.2 To award damages to compensate Plaintiff David D. Rountry for his out-of-pocket
22 expenses from Defendants, in amounts to be determined at trial;
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1 8.3 To award damages to compensate Plaintiff David D. Rountry for his physical pain and
2 suffering, anxiety, emotional distress, and humiliation from Defendants, jointly and
3 severally, in an amount to be determined at trial;

4 8.4 To award damages to compensate Plaintiff David D. Rountry for his physical injuries
5 from Defendants, in an amount to be determined at trial;

6 8.5 To declare that Defendants violated the above-named constitutional rights of Plaintiff
7 David D. Rountry;

8 8.6 To award pre- and post-judgment interest on all amounts awarded;

9 8.7 To award Plaintiff David D. Rountry her costs and attorney fees; and

10 8.8 To grant other relief as appropriate.

11 DATED this 27th day of May, 2011.

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13 /s/ William T. Ferrell
14 William T. Ferrell
15 Attorney for Plaintiff
16 Washington State Bar Number 27022
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